**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**FAO No.10050 of 2014 (O&M)**

**Date of Decision: 25.9.2017**

**ICICI Lombard General Insurance Co. Ltd.**

**..Appellant**

**Vs.**

**Yogita Gupta and others**

**..Respondents**

**CORAM: HON'BLE MRS.JUSTICE REKHA MITTAL**

Present: Mr.Sanjeev Goyal, Advocate for the appellant.

Mr.Sushil Saini, Advocate for respondents No.1 to 3.

Mr.Rahul Bhargava, Advocate for respondents No.4 and 5.

Mr.Rajan Bhargava, Advocate for
Mr. Vishal Aggarwal, Advocate for respondent No.6.

**REKHA MITTAL, J.**

The present appeal directs challenge against award dated 21.7.2014 passed by Motor Accidents Claims Tribunal, Amritsar (hereinafter to be referred as `The Tribunal') whereby compensation has been awarded in regard to death of Balwinder Singh in a motor vehicular accident that took place on 21.9.2012.

The Tribunal has taken into account gross income of the deceased @ Rs.2,45,034/- p.a., added 30% towards future prospects, deducted income tax to the tune of Rs.63,709/- and deduction towards personal expenses to the extent of $1/3^{rd}$ and as such, computed loss of dependency @ Rs.1,69,890/- per annum, which was multiplied with 14 to compute loss of dependency @ Rs.23,78,460/-. In addition, an amount of Rs.25,000/- for funeral expenses, Rs.5000/- for loss of estate and Rs.One lac for loss of consortium has been awarded making total compensation to Rs.25,08,460/- payable with interest @ 7.5% p.a. from the date of award till realisation.

Counsel representing the Insurance Company has assailed findings of the Tribunal on issue No.1 qua rash and negligent driving of jeep bearing Registration No.PB-46-K-9138 as well as quantum of compensation assessed by the Tribunal. To bring home his contention to challenge findings on issue No.1, it is argued that in the first information report lodged at the behest of Amarjit Singh PW3, name of driver of the offending vehicle is stated to be Harpreet Singh but in the application for compensation, Gursahib Singh has been impleaded as driver of the offending vehicle. It is argued that possibility of changing driver of the vehicle for want of valid driving licence with Harpreet Singh nominated in the FIR cannot be ruled out, therefore, petition for compensation is liable to be dismissed on this score alone.

To assail computation of compensation, counsel has two fold submissions to make. It is argued that the Tribunal has wrongly taken into account gross income of Rs.2,45,034/- as an amount of Rs.38,560/- is shown to be income from the house property and another sum of Rs.30,974/- from bank interest which would be available to family of the deceased. It is further argued that income from property business of the deceased in the income tax return for the year 2011-12 Ex.P6 is Rs.1,75,500/- and the said income is to be taken into account for computing loss of dependency. Another submission made by counsel is that in the income tax return Ex.P6, date of birth of the deceased is recorded as 20.5.1962 and as such, deceased was more than 50 years old at the time of occurrence. The Tribunal has wrongly applied multiplier of 14 and allowed benefit of increase in income for future prospects to the extent of 30%.

Counsel representing the claimants, on the other hand, has supported findings of the Tribunal on issue No.1 with the submission that name of driver of offending vehicle being wrongly recorded as Harpreet Singh is not sufficient to doubt testimony of Amarjit Singh, an eye witness to the occurrence. It has further been argued that on the basis of FIR No.316 dated 22.9.2012 under Sections 304-A/279/337/338 of the IPC, due investigation was conducted by the police and Gursahib Singh was put to trial for causing accident. He was convicted and sentenced by the trial Court and his conviction has been affirmed in appeal. Another submission made by counsel is that plea of the Insurance Company with regard to change of driver is based on surmises and conjectures.

So far as compensation assessed by the Tribunal, it is argued that the Tribunal has not awarded adequate compensation under conventional heads in the light of judgments of Hon'ble the Supreme Court **Rajesh and others Vs. Rajbir Singh and others 2013 (3) RCR (Civil) 170 and Vimal Kanwar and others Versus Kishore Dan and others 2013 (2) RCR (Civil) 945.**

I have heard counsel for the parties, perused the paper book and records.

Amarjit Singh, author of the FIR and an eye witness to the occurrence stepped into the witness box to establish plea of the claimants that the accident was caused due to rash and negligent driving of Jeep No.PB 46-K-9138 by Gursahib Singh. Counsel for the appellant has failed to point out any facts elicited in cross examination of Amarjit Singh to shatter evidential value of his testimony or that he was not an eye witness to the occurrence. Admittedly, the Insurance Company did not adduce any evidence to rebut testimony of Amarjit Singh PW3. There is nothing on record suggestive of the fact that Harpreet Singh, whose name figured in the FIR being driver of the offending vehicle did not possess a licence to drive the jeep in question. Under the circumstances, contention of the Insurance Company that driver of the offending vehicle has been substituted later because of Harpreet Singh not holding a valid driving license, is without any foundation and liable to be rejected. This apart, Gursahib Singh would have raised lot of protest against his implication in criminal proceedings for causing the accident had it been true that Harpreet Singh was driver of the offending vehicle. In this view of the matter, contention raised by counsel for the Insurance Company to assail findings of the Tribunal on issue No.1 is not meritorious and accordingly rejected.

This brings the Court to the issue of compensation assessed by the Tribunal. The learned Tribunal has assessed income of the deceased to be Rs.2,45,034/- p.a. Perusal of the income tax return Ex.P6 for the assessment year 2011-12 would clearly indicate that in the computation of income, income from property business is to the extent of Rs.1,75,500/-, the other income is income from house property and bank interest. As income from house property and interest would be available to family of the deceased, the same has to be excluded for computing loss of dependency. That being so, loss of dependency is to be computed on the basis of income of the deceased at Rs.1,75,500/-.

The Tribunal has allowed benefit of increase in income for future prospects to the extent of 30% and applied multiplier of 14 admissible for the age group of 41 to 45 years. Counsel for the claimants has not disputed that in the income tax return Ex.P6, date of birth of the deceased has been recorded as 20.5.1962. The accident in question took place on 21.9.2012. The deceased was 50 years and 4 months old at the time of occurrence. In the light of judgment **Rajesh and others Vs. Rajbir and others (supra)** addition in income for future prospects, in the given circumstances, would be 15% and the admissible multiplier is 13. After deducting income tax and 1/3rd for personal expenses of the deceased, loss of dependency comes to Rs.1,33,095/- p.a. [Rs.1,75,500+15%thereof (26325/-)=Rs.201825-2182 (income tax)=Rs.1,99,643/- minus 1/3rd (66548/-)]. After applying multiplier of 13, total loss of dependency is calculated at Rs.17,30,239/- (Rs.133095x13).

Under conventional heads, an amount of Rs.One Lac for loss of consortium and Rs.25,000/- for funeral expenses awarded by the Tribunal is affirmed. The claimants shall be entitled to Rs.1.5 lacs for loss of love and affection, care and guidance for children of deceased and Rs.25,000/- for loss of estate. The total compensation comes to Rs.20,30,239/- The compensation is reduced by Rs.4,78,221/- (Rs.25,08,460-Rs.20,30,239/-). The Tribunal has allowed interest @ 7.5% p.a. but from the date of award. No reason has been assigned to deny pendente-lite interest. Counsel for the

Insurance Company has not advanced any arguments to support denial of interest from the date of petition till passing of the award. Under the circumstances, claimants shall be entitled to interest @ 7.5% p.a. on Rs.20,30,239/-, from the date of petition till realisation. After adjustment of interest liability in the aforesaid terms, if any amount in excess has been paid, the Insurance Company shall be entitled to recover the same by filing an application before the Tribunal.

The appeal is disposed of in the aforesaid terms.

**( Rekha Mittal )**
**Judge**

**25.9.2017**
Meenu

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No